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J.A. Carter

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE: B-189551**

**DATE: March 6, 1978**

**MATTER OF: American Satellite Corporation**

**DIGEST:**

1. Allegations of violation of Federal Communications Act are for consideration by FCC and not GAO.
2. Policy expressed in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), that as general rule we will not consider subcontractor protests against award of subcontracts by primes does not foreclose consideration of subcontractor protest against award of prime contract if subcontractor is interested party.
3. Subcontractor protest alleging inadequate competition for award of prime contract will not be considered since subcontractor is not interested party.

The American Satellite Corporation (Amsat) has protested the issuance of a communications services authorization by the National Aeronautics and Space Administration (NASA), Communications Division, to the American Telephone and Telegraph Company (AT&T) for communications services solicited under NASA Case No. 7-77.

It appears from the record that NASA solicited competitive proposals for data communications services from several carriers for a 56-kilobit-per-second data link in two segments between the Goddard Space Flight Center (GSFC), Greenbelt, Maryland, and INTELSAT IV in the Pacific area. The domestic segment of the requested services was to be provided via domestic communications satellite from the vicinity of the Paumotu, Hawaii, COMSAT earth station to the vicinity of GSFC with terrestrial extensions limited to local interconnect service. The selected routing was required to be distinct from existing facilities for the apparent purpose of redundancy. NASA received 11 proposals.

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Amsat was a named subcontractor in at least three proposals submitted by prime offerors. In preparing its proposals for presentation to prime offerors, Amsat determined that the closest domestic satellite earth station to the Paumalu station is located at Sunset Beach, Hawaii (the Sunset station), and is operated by General Telephone and Electronics (GTE) and the Hawaiian Telephone Company (Hawtel). Hawtel, in substance, refused Amsat's request for a quotation for access to the Sunset station on the basis that Hawtel and Amsat were competitors for the same service. Hawtel was bidding for the service in conjunction with AT&T.

Amsat alleges that as a result of Hawtel's refusal to provide it access to the Sunset station it was forced to prepare its proposal on the basis of a more expensive and noncompetitive routing. Amsat takes the position that Hawtel's actions in this regard violated Hawtel's obligations as a common carrier and denied NASA the opportunity to receive truly competitive proposals. Amsat contends that an award by NASA to AT&T of a contract for the domestic service, with the knowledge that NASA was denied competitive proposals, would be contrary to NASA's obligation to make award based on the most advantageous offer received, price and other factors considered. Western Union International (WUI), a prime offeror to which Amsat gave a subcontractor quote, has submitted a copy of a letter to the contracting officer in support of Amsat's protest. The letter states that WUI believes that had Amsat not been denied access to the Sunset station and had AT&T (the named WUI subcontractor) not taken similar action with respect to WUI's request for a quote (by quoting an excessively high charge), WUI and Amsat would have been able to better the AT&T offer.

The threshold question in our consideration of this matter is whether this Office will entertain the protest. We think it is clear that the substance of Amsat's allegations regarding the propriety of Hawtel's conduct pertains to the performance by the latter of its obligations as a common carrier under the Federal Communications Act of 1934, as amended, a matter for which Congress has given responsibility to the Federal Communications Commission

(FCC). We note in this connection that Amsat has filed a formal complaint with the FCC charging that Hawtel's actions were a violation of sections 201(a), 201(b) and 202(a) of the Act (47 U.S.C. §§ 201(a), 201(b), 202(a) (1970)). Other carriers have filed pleadings with the FCC contesting AT&T applications for construction permits and tariff approvals in connection with the proposed service.

Neither the protester nor the other parties argue that this subject matter is within the authority of this Office to decide. We agree with this view. We have long held that the determinations and opinions of the Federal regulatory agencies issued in accordance with their statutory responsibilities are not subject to review by our Office. 46 Comp. Gen. 39 (1966); 19 Comp. Gen. 555 (1939).

Counsel for Hawtel states that the protester is basically in the position of a subcontractor and that Hawtel, itself, against which complaint is made, is similarly in the position of a subcontractor to AT&T. Counsel suggests that the policy announced in our decision in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, that as a general rule we will not consider protests of subcontract awards, applies with even greater force in the present action which involves a complaint of prejudicial action by one prospective subcontractor against another potential subcontractor.

We are of the view that the policy announced in Optimum Systems, Inc., supra, does not foreclose our consideration of the present matter. The question before us here is not the propriety of a subcontract award by a prime contractor, as was considered in Optimum Systems, Inc., supra, and to which the announced policy would apply, but the propriety of award of the prime contract by NASA.

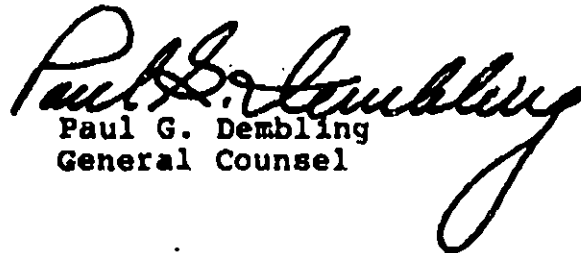
To the extent that Amsat's status as a subcontractor is relevant, we view the question to be whether Amsat is an "interested party" under our Bid Protest Procedures, 4 C.F.R. § 20.1(a) (1976). In Hydro-Clear Corporation, B-189486,

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February 7, 1978, we considered as too remote the protest of a prospective subcontractor against the responsiveness of the proposed awardee's bid on the basis that it failed to comply with a descriptive literature requirement. We held in that case that legitimate recognizable interests in the prime contract award were adequately protected by limiting the class of parties eligible to request GAO review to the firms that submitted bids, i.e., prospective contractors.

Amsat's protest relates essentially to the degree of competition for award of the prime contract, a matter which although directly affecting the prime offerors is only indirectly of interest to potential subcontractors. In these circumstances, we are of the opinion that the legitimate direct interests in the prime contract award here are adequately protected by limiting the class of parties eligible to seek review by this Office to prime offerors. None of the prime offerors have complained directly to this Office regarding the adequacy of competition for the prime contract award. The copy of the letter furnished by WUI does not alter this conclusion since it is not a direct protest to this Office. We conclude that Amsat is not an interested party within the meaning of our Bid Protest Procedures, supra. See Hydro-Clear Corporation, supra.

For the foregoing reasons, we decline to consider the protest on the merits.

  
Paul G. Dembling  
General Counsel